8/1/91

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of
Carnell Rivers Trucking Co.,

Respondent

Docket Number
II MWTA-89-0202

Judge Greene

ORDER UPON MOTIONS FOR SUMMARY JUDGMENT AS TO LIABILITY

This matter arises under the Solid Waste Disposal Act of 1970 as amended by the Medical Waste Tracking Act of 1988, (hereafter "MWTA" or "the Act"), 42 U.S.C. §6992 - 6992(k), and regulations promulgated in accordance with authority contained therein, 54 Fed. Reg. 12326 (1989) (codified at 40 C.F.R. §259.73 (1990)).

The complaint charges respondent, Carnell Rivers Trucking Company, with two violations of failure to transport medical waste

in accordance with the requirements of 40 C.F.R. §259.73(a)(2)[1] and 40 C.F.R. §259.73(b)(3)[2] In count 1, complainant alleges that respondent failed to ensure that boxes of medical waste were not subjected to mechanical stress or compaction during loading, unloading, or transit. In count 2, it is alleged that the trailer used to transport medical waste did not bear proper identification. The charges in the complaint are based upon an inspection by a United States Environmental Protection Agency (EPA) representative of respondent's trailer on August 10, 1989. Complainant moved for

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[1] 40 C.F.R. §259.73 (1990) on "Vehicle Requirements" reads as follows:

(a) Transporters must use vehicles to transport regulated medical waste that meet the following requirements: (1) The vehicle must have a fully enclosed, leak-resistant cargo carrying body; (2) The transporter must ensure that the waste is not subject to mechanical stress or compaction during loading and unloading or during transit; (3) The transporter must maintain the cargo-carrying body in good sanitary condition; and (4) The cargo-carrying body must be secured if left unattended.

(b) The transporter must use vehicles to transport regulated medical waste that have the following identification on the two sides and back of the cargo-carrying body in letters a minimum of 3 inches in height: (1) The name of the transporter; (2) The transporter's State permit or license number, if any; and (3) A sign or the following words imprinted: (i) MEDICAL WASTE; or (ii) REGULATED MEDICAL WASTE.

(c) A transporter must not transport regulated medical waste in the same container with other solid waste unless the transporter manages both as regulated medical waste in compliance with this subpart.

(Note: Paragraph (a)(4)(b) has been revised with a clarification that INFECTIOUS WASTE may be used in the vehicle markings, as explained in 54 Fed. Reg. 12354 (1989). 55 Fed. Reg. 27228 (1990)).

[2] See text of 40 C.F.R. §259.73(b)(3), supra note 1.

partial "accelerated decision"[3] as to liability on both counts. Respondent cross-filed a motion for summary judgment. (Respondent's Brief in Opposition to Complainant's Motion for Partial Accelerated Decision, March 4, 1991, at 11).

The parties have stipulated several facts that provide the background for this action. (See exhibit 1, attached to Complainant's Motion for Partial Accelerated Decision). A truck owned by respondent transported about 3,380 pounds of untreated regulated medical waste generated by North Central Bronx Hospital, Bronx, New York, to Southland Joint Venture Exchange, an incineration facility in Hampton, South Carolina (hereafter "Southland"). The facility accepts "regulated medical waste" [as defined in 40 C.F.R. §259.10(b)] generated in a "Covered State" [as that term is defined in Section 11001(a) of the MWTA and in 40 C.F.R. §259.10(b)].[4] Respondent accepted the waste in New York for transfer to South Carolina on July 31, 1989. Respondent's trailer held the North Central Bronx waste at the time of the inspection by

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[3] 40 C.F.R. §22.20(a) (1990) provides that an "accelerated decision" may be rendered "if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law as to all or any part of the proceeding." "Accelerated decision" is analogous to summary judgment under Federal Rule of Civil Procedure 56(c), which provides that "[summary judgment] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law".

[4] "Covered States" means those States that are participating in the demonstration medical waste tracking program. It includes States identified under Subtitle J of RCRA which have not petitioned out of the program pursuant to §259.21 of this part. . . . 40 C.F.R. §259.10(b) (1990).

EPA at Southland on August 10, 1989. (See exhibit 1 attached to Complainant's Motion for Partial Accelerated Decision).

Taking first count 1 of the complaint, it is alleged that, at the time of inspection, many of the cardboard boxes of regulated medical waste in respondent's vehicle were collapsing because of the weight of other boxes of waste piled on top of them; as a consequence, many boxes were crushed or broken, and wastes were being compacted. The Code of Federal Regulations states that "[t]he transporter must ensure that waste is not subject to mechanical stress or compaction during loading and unloading or during transit."[5] Two provisions in the Act support this requirement. Medical waste that has not been stressed during handling will in the event of leakage pose less of a contamination threat both to the public and to handlers of the waste.[6]

Complainant asserts that respondent's violation is primarily supported by the affidavit of an EPA inspector.[7] The inspector observed that many of the boxes in respondent's trailer were "crushed and compacted to varying degrees." A photograph of some

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[5] 40 C.F.R. 259.73(a)(2) (1990).

[6] Demonstration Medical Waste Tracking Program, 42 U.S.C. §6992(b)(a)(B) (1988). Regulations promulgated under this portion of the Medical Waste Tracking Program appear at 54 Fed. Reg. 12353-54 (1989) (explaining that "[the] requirement that the vehicle not compact those wastes is based on evidence that compaction will frequently break the containers holding the medical waste, resulting in the generation of loose needles or sharps protruding from containers, or leaking blood and other fluids, all of which are potential sources of exposure to waste handlers and the public").

[7] Affidavit of EPA inspector Raymond Slizys. (Exhibit 2 attached to Complainant's Motion for Partial Accelerated Decision).

of the boxes, taken by the inspector, is in the record.[8] Respondent admits that boxes were "slightly buckled," that some "appeared compressed" (respondent's March 4, 1991, brief at 2, 4), and attributes their condition to humidity at the Southland facility (answer to the complaint, at 2). Respondent asserts that there is no evidence that the weight of the boxes compacted the actual medical waste stored in containers within the boxes, or that the buckled boxes caused leakage. Nevertheless, the photograph shows that the boxes were subject to more than "slight" compaction.[9]

Comments which accompanied the regulations at the time of publication in the Federal Register state that "(C)ompaction and/or rough treatment of packaged regulated medical wastes may compromise the integrity of the packaging and, therefore, must be avoided."[10] Given the importance of the objective, it is not enough merely to assert that medical waste contained in compacted boxes may not have been subjected to direct stress. It is enough for complainant to show that the boxes were compacted, which the photograph clearly demonstrates. For purposes of this regulation, stress upon the packaging constitutes an unacceptable risk of leakage or spillage

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[8] The photograph of the open back end of respondent's trailer shows twenty-one boxes stacked up in rows. The degree of compaction increases toward the base of the load. The bottom five boxes are mashed considerably by the boxes on top. A copy of the photograph was originally submitted with complainant's pretrial exchange as exhibit 8. Subsequently, an original photograph was furnished by complainant.

[9] See note 5, supra.

[10] 54 Fed. Reg. 12353 (1989) (codified at 40 C.F.R. §259.73).

of the waste itself.[11] As complainant ably points out, respondent's interpretation of the regulation here is so narrow as to impose a significant burden upon regulators if they were required to show the actual degree of stress on the waste from compaction.[12]

Again, one of the primary goals of the MWTA is to "protect waste handlers and the public from exposure."[13] If regulators must sift through stacks of waste to determine the degree of mechanical compaction upon the waste itself, as respondent would have them do, not only could their safety not be assured, but efforts to monitor compliance would be markedly impaired.[14] Accordingly, it will be held that compaction of the waste has been sufficiently demonstrated, when, as here, it is shown that outer cartons have been compacted. Respondent's responsibility to prevent such compaction during loading, unloading, and transit is absolute under

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[11] 54 Fed. Reg. 12353 (1989) (codified at 40 C.F.R. §259.73(a)(2)) (stating that "[c]ompaction and/or rough treatment of packaged regulated medical wastes may comprise the integrity of the packaging and, therefore, must be avoided").

[12] Complainant's response to respondent's cross motion, p. 6.

[13] Demonstration Medical Waste Tracking Program, 42 U.S.C. §6992(b)(a)(B) (1988).

[14] Measuring the degree of mechanical stress on the actual medical waste would require opening the containers. Regulations promulgated under the MWTA specifically state that "[the] Agency is not recommending that owners and operators open containers of waste to make further inspections, as this may increase occupational exposure to the waste." 54 Fed. Reg. 12358 (1989).

this regulation, and no showing that, the evidence of the photograph notwithstanding, respondent did carry out its responsibility has been made. Consequently, respondent violated 40 C.F.R. §259.73(a)(2).

In count 2, complainant alleges that respondent violated 40 C.F.R. §259.73(b)(3) by transporting regulated medical waste in a vehicle which did not have signs on two sides and on the back to identify the cargo as medical waste. However, this charge is based upon the inspection of August 10, 1989, which occurred some time after the truck arrived at the Southland facility.[15] Respondent's answer to the complaint states that all of its trailers have signs, and that " . . . . if there was no sign on a particular trailer . . . the sign may have been caused to fall off . . . due to . . . humidity and rainfall while said trailer was required to wait at Southland or was the result of vandalism." (Answer, at 3). Complainant takes the position that respondent retains legal responsibility to comply with the regulation "until the destination facility has . . . checked that waste for, and, if warranted, noted any discrepancies in the shipment the transported (sic) has delivered." (Complainant's brief, P. 19, 25). The checking process had apparently not taken place before the August 10, 1989,

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[15] The EPA inspector makes the following statement in his affidavit: "I did not see on the back of Respondent's trailer or on either of the two sides of this trailer any sign stating, or the words imprinted, 'MEDICAL WASTE' or 'REGULATED MEDICAL WASTE'." (Exhibit 2, EPA inspector's affidavit, p. 7, attached to complainant's motion).

inspection, although the record is not clear in this regard. (Complainant's exhibit 2, Slizys affidavit at 4-5, seems to suggest that checking for discrepancies is carried out at the time the vehicles are unloaded at the facility. The affidavit further states that about 100 trailers were waiting to be unloaded when the inspector arrived at Southland on August 10, 1989).

While complainant's counsel makes a valiant attempt to support this interpretation with every possible argument, his enthusiastic effort must fail because the language of the regulation simply does not go that far. The regulation states only that transporters must use vehicles which bear certain identification, including ". . . . a sign or the following words imprinted: (i) MEDICAL WASTE; or (ii) REGULATED MEDICAL WASTE," to transport regulated medical waste.[16] Nothing requires the transporter to ensure that the signs remain in place once trailers have been surrendered at the disposal facility. Nothing in the regulations or comments, or, indeed, in the legislative history suggests that complainant's interpretation must be read into §259.73(b)(3). Nor does any legal principle come to mind that would require the word "transport" to be so construed.

In the legislative history to the MWTA, legislators often remarked that they wanted the demonstration tracking program to

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[16] 40 C.F.R. §259.73(b)(3). There is no requirement that the signs be permanently affixed, possibly because of the problems such a requirement would cause when the trailers are used for other purposes.

track medical waste from "cradle to grave."[17] Yet, while signs are to play a part in the tracking system, it is primarily the documentation that tracks the waste from pickup to disposal. The inspector in the instant case found no problem with the documentation that accompanyed respondent's load.[18] By delivering the medical waste to the disposal facility with documentation in order, respondent operated in conformity with important requirements of the Act.[19],[20]

The plain language of the regulation does not require signs to be on the trailer or vehicle at any time other than during transit.

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[17] See, e.g., 134 CONG. REC. S15327 (daily ed. October 7, 1988) (statement of Rep. Chafee). See also, 54 Fed. Reg. 12327 (1989).

[18] Affidavit of EPA inspector, pp. 6-11. (Exhibit 2 attached to complainant's motion).

[19] Further support for the contention that the agency is primarily concerned that the waste reaches the disposal site is found in the requirements for certification of disposal. The regulations state a belief that it is necessary only to certify receipt of the waste at the disposal site to the waste generator. Certification of destruction is said not to be necessary. 54 Fed. Reg. 12359 (1989). See also 134 CONG. REC. H9537 (daily ed. October 4, 1988) (statement of Rep. Whitaker) (stating that "[t]he hope is that these tracking programs will help reduce improper dumping, and provide some assurance that medical waste reaches the intended site"); Id. at H9539 (statement of Rep. Florio) (stating that "a sensible tracking system can make sure that wastes are safely routed to disposal sites, not discarded in storm sewers, by the side of the road, or in the ocean").

[20] See 134 CONG. REC. S15327 (daily ed. October 7, 1988) (statement of Sen. Baucus) (explaining that the Act "will provide authority for a State or the Federal Government to take civil and criminal enforcement actions against those who ignore the law."). See also 134 CONG. REC. S15328 (daily ed. October 7, 1988) (statement of Sen. Lautenberg) (stating that "[a] tracking system will also deter those who contemplate illegally disposing of medical waste.").

Complainant's interpretation of the rules would require respondent to be responsible for an indefinite period for the maintenance of signs on a trailer not under respondent's direct control at the disposal facility. In the present case, for example, it is not clear when, if ever, Southland inspected respondent's trailer for discrepancies.[21],[22] Complainant would expose respondent to additional liability, beyond that presently set forth[23] in the regulation.[24]

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[21] Disposal facilities are apparently required to check upon receipt whether there are discrepancies between the load and descriptions of the load on the tracking form. There is no like requirement to inspect the vehicle carrying the load. The regulations state: "Upon receipt, the owner or operator [of the destination facility] must determine that the tracking form accurately reflects the waste received at the facility . . . ." 54 Fed. Red. 12358 (1989) [codified at 40 C.F.R. §259.81 (1990)].

[22] The exterior of the vehicle, unlike its contents, may be susceptible to forces and conditions outside respondent's control. See Answer to Complaint, p. 2 (misnumbered p. 3) which suggests that if signs were not on the trailer at the time of inspection, they had fallen off due to humidity or water seepage, or had been stolen.

[23] It may be possible to amend the regulation to express complainant's view.

[24] See supra note 20 (explaining that Congress' primary concern for transporters is that they transport medical waste to the proper disposal facility).

After all, the trailer was inside the facility. The danger to the public from unidentified cargo had passed. Danger to facility employees was remote, given that the boxes were marked with the universal biohazard symbol (Exhibit 2, Slizys affidavit, p. 9).

Accordingly, it is concluded that the regulation in question does not give fair notice to the regulated community that transporting vehicles may be required to retain the medical waste signs "until the destination facility has . . . checked" for discrepancies in the shipment. See, for instance, Gates & Fox & Company, Inc., v. OSHRC, 790 F. 2d 154, 156 (C.A. D. C., 1986), in which Judge (now Justice) Scalia, writing for a unanimous court that included Judges Wald and Silberman, quoted with approval from Diamond Roofing Co. v. OSHRC, 528 F. 2d 645, 649 (5th Cir. 1976):

> The respondents contend that the regulations should be liberally construed to give broad coverage because of the intent of Congress to provide safe and healthful working conditions for employees. An employer, however, is entitled to fair notice in dealing with his government. Like other statutes and regulations which allow monetary penalties against those who violate them, an occupational safety and health standard must give an employer fair warning of the conduct it prohibits or requires . . . .
>
> If a violation of a regulation subjects private parties to criminal or civil sanctions, a regulation cannot be construed to mean what an agency intended but did not adequately express . . . . [T]he Secretary as enforcer of the Act has the responsibility to state with ascertainable certainty what is meant by the standards he has promulgated.[25]

It is noted also that in Gates, at 156-157, the possibility of the regulation at issue being interpreted in the manner contended

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[25] The recent decision in Rollins Environmental Service (N.J.) Inc. v. U.S. EPA, No. 90-1508, C.A. D.C., July 5, 1991, is not inconsistent, since it appears that the specific regulation pursuant to which Rollins was charged in the complaint was not itself ambiguous. (See p. 3, slipsheet).

for by OSHA had previously been brought to Gates' attention. Judge Scalia commented, however, that

> . . . . the 'warning' . . . came not from OSHA but from the general contractor's safety inspector, and was therefore not an authoritative interpretation of the regulation. It shows, at most, that some person (and one who had nothing to lose by an abundance of caution) read the regulation as OSHA suggests. That is insufficient, in our view, to cure the impermissible vagueness. [Emphasis original]

Consequently, it is concluded that respondent here did not violate 40 C.F.R. §259.73(b)(3) by failing to have signs on the vehicle at the time of the inspection, which, in this case took place at least several days after the vehicle arrived at the facility.

Accordingly, complainant's motion for accelerated decision as to liability pursuant to count 1 of the complaint is granted. Respondent's motion for summary judgment on that count is denied. Complainant's motion for accelerated decision as to liability for the violation charged in count 2 is denied. Respondent's motion for summary judgment on that count is granted.

Findings of Fact and Conclusions of Law

1. EPA has authority to enforce 40 C.F.R. §259.73, and regulations issued pursuant thereto under authority granted by 42 U.S.C. §6992(d) (1988).

2. At all times relevant to this action, respondent has been a "transporter" [as that term is defined in 40 C.F.R. §259.10(a)] of regulated waste that had been generated in a Covered State. (Stipulation #17).

3. Respondent is a "person" within the meaning of section 1004(15) of the Solid Waste Disposal Act, 42 U.S.C. §6903(15), and 40 C.F.R. §259.10(a), and is subject to the Act.

4. Respondent operates a facility at 221 Hoover Street, Hampton, South Carolina (hereinafter respondent's facility) (Stipulation #6), for the purpose in part of transporting medical waste generated in the State of New York (Stipulation #23) to an incineration facility at Southland Exchange Joint Venture, 100 Nix Street, Hampton, South Carolina (Stipulation #30).

5. Southland Joint Venture Exchange is an incineration facility which accepts "regulated medical waste" [as that term has been defined in 40 C.F.R. §259.10(b)] generated in a "Covered State" [as that term is defined in Section 11001 of the MWTA and in 40 C.F.R. §259.10(b)]. (Stipulation #12).

6. An EPA representative inspected respondent's trailer (Tennessee license plate, number U 71287) (Stipulation #15) at the Southland facility on August 10, 1989 (Stipulation #11), which was

used to transport medical waste generated at North Central Bronx Hospital, 3424 Kossuth Avnue, Bronx, New York (Stipulation #23). The purpose of the inspection was to determine respondent's compliance with 40 C.F.R. §259. (Stipulation #14).

7. At the time of inspection, respondent's trailer contained regulated medical waste generated in New York, a "covered state." (Stipulation #22).

8. Medical waste in respondent's trailer was compacted at the time of inspections. Complainant's showing that the boxes were compacted in the truck while it waited to be unloaded is sufficient to establish the fact of compaction. Respondent failed to ensure that the medical waste was not subject to mechanical stress or compaction during loading, unloading, or transit. The medical waste in respondent's trailer, therefore, was compacted in violation of 40 C.F.R. §259.73(a)(2).

9. At the time of the inspection on August 10, 1989, there were no signs on respondent's trailer pursuant to 40 C.F.R. §259.73(b)(3) to indicate that the trailer contained medical waste.

10. 40 C.F.R. §259.73(b)(3) does not give fair notice to the regulated community of any requirement that transporting vehicles must retain identifying signs until such time as the receiving

facility checks the load for discrepancies, i.e. well after transportation to the destination has ended.

11. Respondent did not violate 40 C.F.R. §259.73(b)(3) by failing to ensure that the identifying signs required by that section were on the transporting vehicle until the shipment was checked by the receiving facility for discrepancies.

ORDER

Based upon the foregoing, and pursuant to authority granted in Section 11005(a) of the MWTA, it is ORDERED that respondent shall, upon the effective date of this Order, comply with 40 C.F.R. §259.73(a)(2) in that respondent shall ensure that no regulated medical waste it transports be subject to either mechanical stress or compaction during loading and unloading or during transit, as provided in 40 C.F.R. §259.73(a)(2).

And it is FURTHER ORDERED that the parties shall, no later than August 23, 1991, confer for the purpose of attempting to settle the matter of the penalty sought for the violation of 40 C.F.R. §259.73(a)(2) and shall report upon their progress during the week ending August 30, 1991.

J. F. Greene
Administrative Law Judge

Dated: August 1, 1991
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that the original of this **Order Upon Motions for Summary Judgment as to Liability** was sent to the Regional Hearing Clerk and copies were sent to the counsel for the complainant and counsel for the respondent on August 1, 1991.

Shirley Smith
Secretary to Judge J. F. Greene

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EXHIBIT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the Matter of CARNELL RIVERS TRUCKING CO., Respondent, Proceeding under Section 11005 of the Medical Waste Tracking Act of 1988.	Docket No. II MWTA-89-0202

STIPULATIONS

IT IS HEREBY STIPULATED, AGREED TO, and ACCEPTED BY and between the parties hereto, through their respective counsel, as follows:

1. This is a civil administrative action instituted pursuant to 11005 of the Medical Waste Tracking Act of 1988, 42 U.S.C. § 6992 et seq. ("MWTA").

2. The Environmental Protection Agency ("EPA") has jurisdiction to prosecute this action by virtue of the authority granted to it in the MWTA.

3. Respondent is Carnell Rivers Trucking Co., Inc. (hereinafter "Respondent").

4. Respondent is a corporation organized pursuant to, and existing under, the laws of the State of South Carolina.

5. Respondent is a "person" within the meaning of Section 1004(15) of the Solid Waste Disposal Act ("SWDA"), 42 U.S.C. § 6903(15), and 40 C.F.R. § 259.10(a).

6. At all times relevant to the matters alleged in the Complaint herein, Respondent has owned a facility located at 221 Hoover Street, Hampton, South Carolina (hereinafter "Respondent's facility").

7. At all times relevant to the matters alleged in the Complaint herein, Respondent has operated Respondent's facility.

8. At all times relevant to the matters alleged in the Complaint herein, Respondent has controlled Respondent's facility.

9. At all times relevant to the matters alleged in the Complaint herein, Respondent has transacted business within the State of New York.

10. On or about August 10, 1989, a duly designated representative of the EPA, Raymond Slizys, conducted an inspection at Southland Exchange Joint Venture, 100 Nix Street, Hampton, South Carolina (hereinafter "Southland").

11. On or about August 10, 1989, the aforementioned duly designated representative of the EPA conducted an inspection at Southland of a trailer that had been transported to Southland by Respondent.

12. Southland is an incineration facility accepting "regulated medical waste" (as that term has been defined in 40 C.F.R. § 259.10(b)) generated in a "Covered State" (as that term has been defined in Section 11001 of the MWTA and in 40 C.F.R. § 259.10(b)).

13. The aforementioned inspection (Paragraphs 10 and 11, above; hereinafter "the inspection") was conducted pursuant to Section 11004 of the MWTA.

14. The inspection was conducted for the purpose, inter alia, of determining Respondent's compliance with the EPA regulations for the tracking and management of regulated medical waste, said regulations codified at 40 C.F.R. Part 259.

15. The aforementioned trailer (Paragraph 11, above) bore a Tennessee license plate, number U 71387 (hereinafter said trailer referred to as "Respondent's trailer").

16. At all times relevant to the matters alleged in the Complaint herein, Respondent owned and/or leased Respondent's trailer.

17. At all times relevant to the matters alleged in the Complaint herein, Respondent has been a "transporter" (as that term has been defined in 40 C.F.R. § 259.10(a)) of regulated medical waste that had been generated in a Covered State.

18. At all times relevant to the matters alleged in the Complaint herein, Respondent has accepted for transport regulated medical waste that had been generated in a Covered State.

19. At all times relevant to the matters alleged in the Complaint herein, Respondent has transported regulated medical waste that had been generated in a Covered State.

20. At all times relevant to the matters alleged in the Complaint herein, Respondent has accepted for transport regulated medical waste from a transporter that had accepted regulated medical waste directly from a "generator" (as that term has been defined in 40 C.F.R. § 259.19(a)) in a Covered State, which waste had been generated in a Covered State.

21. At all times relevant to the matters alleged in the Complaint herein, Respondent has transported the aforementioned regulated medical waste (Paragraph 20, above).

22. As of the date of the inspection, Respondent's trailer contained regulated medical waste that had been generated in a Covered State.

23. The aforementioned regulated medical waste (Paragraph 22, above) had been generated by and at the North Central Bronx Hospital, 3424 Kossuth Avenue, Bronx, New York (hereinafter said regulated medical waste referred to as the "North Central Bronx waste" and said hospital referred to as "North Central Bronx Hospital").

24. The North Central Bronx waste consisted of approximately three thousand three hundred eighty (3,380) pounds of untreated regulated medical waste.

25. The North Central Bronx waste was accepted for transport directly from the North Central Bronx Hospital by a transporter known as American Medical Waste Systems, Inc. (hereinafter "American Medical") on July 31, 1989.

26. American Medical transported the North Central Bronx waste from the North Central Bronx Hospital to a facility located at 344 Duffy Avenue, Hicksville, New York (hereinafter the "Hicksville facility").

27. Subsequent to American Medical having transported the North Central Bronx waste to the Hicksville facility, Respondent accepted for transport the North Central Bronx waste at the Hicksville facility.

28. Respondent accepted for transport to Southland the North Central Bronx waste on July 31, 1989.

29. Subsequent to Respondent having accepted for transport the North Central Bronx waste at the Hicksville facility (Paragraphs 27 and 28, above), Respondent transported the North Central Bronx waste to Southland.

30. Respondent transported the North Central Bronx waste to Southland in Respondent's trailer.

31. The North Central Bronx waste was accompanied from its point of generation at the North Central Bronx Hospital through to Southland by Medical Waste Tracking Form, Tracking Form Number 22725.

32. As of the time and date of the inspection, Respondent's trailer held the North Central Bronx waste.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized attorneys, have affixed their signatures on the respective dates indicated below.

EXAMINED, AGREED TO, and ACCEPTED BY:

COMPLAINANT - REGIONAL ADMINISTRATOR, U. S. ENVIRONMENTAL PROTECTION AGENCY - REGION II

By: Lee A. Spielmann
Lee A. Spielmann
Counsel for Complainant

Dated: January 10, 1991
New York, New York

RESPONDENT - CARNELL RIVERS TRUCKING CO.

By:
Peter J. Scuderi
Counsel for Respondent

Dated: 1/9/91, 1991
Philadelphia, PA